

BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
FRANK D. REEVES MUNICIPAL BUILDING
2000 14TH STREET, N.W., SUITE 420
WASHINGTON, D.C. 20009
(202) 671-0550

IN THE MATTER OF

Krisotopher David Hart
Hart for Commissioner
2301 E Street N.W., No. A707
Washington D.C. 20037

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DATE: April 5, 2005

DOCKET NO.: Investigation 04-06

ORDER

Statement of the Case

On January 14, 2005, the Office of Campaign Finance (OCF) issued to Kristopher David Hart (respondent), candidate for Advisory Neighborhood Commission (ANC) 2A05, an order to appear before the Director and to show cause why he should not be found in violation of the D.C. Campaign Finance Reform and Conflict of Interest Act of 1974 (the Act), D.C. Official Code §§1-1101.01 et seq. (2001 Edition).

Specifically, it was alleged by Dorothy Miller, ANC for 2A05, in a complaint officially received by the OCF on December 9, 2004, that the respondent and a campaign worker distributed literature that lacked the requisite disclaimers; and that the respondent has failed to timely file with OCF the Summary Financial Report of a Candidate for the Office of Member of an Advisory Neighborhood Commission (ANC Summary Financial Report).

Issues

1. Whether the respondent violated D.C. Official Code §1-1102.01(e), when he allegedly distributed campaign literature that failed to include the required notice: “A copy of our report is filed with the Director of Campaign Finance of the District of Columbia Board of Elections and Ethics.”
2. Whether the respondent violated D.C. Official Code §1-1102 .10 when he allegedly distributed campaign literature, that failed to include the required “words ‘paid for by’ followed by the name and address of the payer or committee or other person and its treasurer on whose behalf the material.”
3. Whether the respondent violated 3DCMR §3002.5 when he allegedly failed to timely submit an ANC Summary Financial Report.

Background

Pursuant to the issuance of the Order to Show Cause, on January 14, 2005 the respondent appeared at a scheduled hearing pro se on March 9, 2005. The scope of the OCF investigation encompassed reviewing documents, verifying and evaluating testimony; and, BOEE and OCF records. The investigation ended on March 9, 2005, upon examination of the ANC Summary Financial Report, submitted by the respondent on said date

Relevant Statutory and Regulatory Provisions

D.C. Official Code § 1-1102.01(e) states:

Each political committee and candidate shall include on the face or front page of all literature and advertisement soliciting funds the following notice: “A copy of our report is filed with the Director of Campaign Finance of the District of Columbia Board of Elections and Ethics.”

D.C. Official Code § 1-1102.10 states, in pertinent part:

All newspaper or magazine advertising, posters, circulars, billboards, handbills, bumper stickers, sample ballots...and other matter with reference to or intended for the support or defeat of a candidate or group of candidates for nomination or election to any public office ... shall be identified by words “paid for by” followed by the name and address of the payer or the committee or other person and its treasurer on whose behalf the material appear.

D.C. Official Code § 1-1103.05(b)(3) provides that “the Board may issue a schedule of fines for violations of [the Act], which may be imposed ministerially by the Director [of the Office of Campaign Finance].”

The relevant OCF regulation, at 3 D.C.M.R. §3002.5, requires each ANC candidate, by write-in or nomination, to submit an ANC Summary Financial Report.

Pursuant to 3 DCMR §3709.1, “The Director may institute or conduct an informal hearing on alleged violations of the reporting and disclosure requirements, prescribed by the Act and Chapters 30–37 of this title.”

Pursuant to 3 DCMR §3711.1, “Upon a determination... that a violation has occurred, the Director may ministerially impose fines upon the offending party [.]”

Pursuant to 3 DCMR §3711.2, “[f]ines shall be imposed as follows:

“(n) Failure to place notices required by the Act on campaign literature \$500

“(ee) Failure to file ANC Summary Financial Report \$30 per day [.]”

For good cause shown pursuant to 3 D.C.M.R. §3711.6, the Director of Campaign Finance may modify, rescind, dismiss or suspend any fine.

Summary of Evidence

As evidence in support of her complaint, Dorothy Miller submitted the following: copies of campaign literature, lacking the requisite disclaimers, promoting the candidacy of respondent; and copies of articles published by The GW Hatchet referencing the respondent's campaign to unseat the incumbent in the November 2, 2004 election for ANC2A05.

On March 9, 2005, William O. SanFord, OCF Senior Staff Attorney, examined respondent under oath. Respondent stated that he decided to run against Commissioner Miller as a write-in candidate because he missed the filing deadline required for ballot access. Respondent further stated that he knew Commissioner Miller was a formidable opponent with numerous years of experience and he respected her service to the community. Nonetheless, respondent decided to challenge her after being encouraged by several friends to seek elective office.

Respondent said that he is a student at George Washington University. He averred that he has not sought elective office before and that he was not aware that he was required to file an ANC Summary Financial Report with OCF, especially as an unsuccessful candidate. Respondent clarified that he was under the erroneous impression that he was only required to file a Summary Financial Report with OCF if his campaign was successful. Respondent conceded that his political literature did not include the requisite disclaimers and averred that he was not aware of the requirement when the materials were being circulated. Respondent had prepared an ANC Summary Financial Report which he submitted at the conclusion of the hearing.

Findings of Fact

Having reviewed the allegations and OCF records, I find:

1. Respondent was a write-in candidate for the office of Advisory Neighborhood Commissioner for 2A05, in the November 2004 election.
2. Respondent distributed and circulated campaign literature to buttress his campaign and the campaign literature failed to include the necessary identifying disclaimer language thereon.
3. Respondent was required to file an ANC Summary Financial Report on or before February 14, 2005.
4. Respondent believed that he was not required to file an ANC Summary Financial Report because his campaign was unsuccessful.
5. Respondent filed an ANC Summary Financial Report on March 9, 2005.

6. Respondent was a first time office seeker in the District of Columbia.
7. Respondent does not have any prior history of violations with OCF.

Conclusions of Law

Based upon the record and evidence herein, I therefore conclude:

1. Respondent violated D.C. Official Code §§1-1102.01(e) and 1-1102 .10 because he distributed campaign literature and failed to include the requisite disclaimers.
2. Respondent violated 3 D.C.M.R. §3002.5 by failing to timely submit an ANC Summary Financial Report on or before February 14, 2005.
3. The penalty established at 3 D.C.M.R. §3711.2(ee) for failure to timely submit an ANC Summary Financial Report is a fine of \$30 per day.
4. In accordance with D.C. Official Code §1-1103.05(b)(3), respondent may be fined a maximum of \$480 for failure to timely submit an ANC Summary Financial Statement.
5. The penalty established at 3 D.C.M.R. §3711.2(n) for failure to place notices required by the Act on campaign literature is a fine of \$500 for each type of notice.
6. In accordance with D.C. Official Code §1-1103.05(b)(3), respondent may be fined a maximum of \$1000 for failure to place the required language on his campaign literature.
7. For good cause shown pursuant to 3 D.C.M.R. §3711.6, the Director of Campaign Finance may modify, rescind, dismiss or suspend any fine.
8. Respondent's explanations for failing to timely file an ANC Summary Financial Report and place notices required by the Act on campaign literature, that he believed the filing unnecessary inasmuch as he was not successful in his campaign and that he was unaware of the requirement of the notices, respectively, were deemed credible and constitute good cause for suspension of any fines, in light of the fact that he filed his ANC Summary Financial Report and does not have any prior history of violations with OCF.

Recommendation

In view of the foregoing, I hereby recommend that the Director suspend the fines of \$480 and \$1000 which could be imposed against respondent for failing to timely file his ANC Summary Financial Report, in violation of 3 D.C.M.R. §3002.5; and, to place notices required by the Act on campaign literature, in violation of D.C. Official Code §§1-1102.01(e) and 1-1102.10, respectively.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that the fine in this matter be hereby suspended.

Date

Cecily E. Collier-Montgomery
Director

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order by mail today.

Anwar Wilson
Clerk

NOTICE

Pursuant to 3 D.C.M.R. §3711.5 (1999), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 433, 2000 14th Street, N.W., Washington, D.C., 20009.